



# STATE OF IOWA

CHESTER J. CULVER, GOVERNOR  
PATTY JUDGE, LT. GOVERNOR

DEPARTMENT OF HUMAN SERVICES  
EUGENE I. GESSOW, DIRECTOR

March 13, 2009

## GENERAL LETTER NO. 12-E-20

ISSUED BY: Division of Child and Family Services

SUBJECT: Employees' Manual, Title 12, Chapter E, ***CHILD CARE CENTERS***, pages 11, 15, 16, 17, 26, and 34, revised.

### Summary

Chapter 12-E is revised to update Departmental names and addresses and to correct a typographical error.

### Effective Date

Immediately

### Material Superseded

Remove the following pages from Employees' Manual, Title 12, Chapter E, and destroy them:

Page

Date

11, 15-17, 26, 34

December 2, 2005

### Additional Information

Refer questions about this general letter to your area social work administrator.

Two or more visits to the facility may be required in order to complete a thorough evaluation. Return visits are essential for new applicants and facilities with provisional licenses.

After review of the *Licensing Regulation Checklist*, the fire marshal's report, and any other pertinent reports, the child care consultant shall:

- ◆ Complete the *Child Care Center Evaluation and Recommendation for License* and
- ◆ Make a recommendation.

Send recommendations to grant a full or provisional license to the Division of Child and Family Services for the *Notice of Action* and license to be issued.

Send recommendations to deny or revoke a license to the licensing supervisor for approval and processing.

The Division Child and Family Services will complete two copies of the *Notice of Action*, form 470-0728.

- ◆ One copy of the *Notice of Action* is mailed to the child care consultant.
- ◆ The other copy is mailed to the center with:
  - The *Child Care Evaluation and Recommendation for License*, and
  - The license certificate (or a new seal for a renewal or change in licensing status to provisional).

- Iowa Code Section 237A.19 states “a person who establishes, conducts, manages, or operates a center without a license shall be guilty of a serious misdemeanor.”
- The same section of the Iowa Code states “each day of continuing violation after . . . notice from the Department by certified mail shall be considered a separate offense.”

Send the notice to the operator by certified mail. Send a copy of the notice to the county attorney, to the licensing supervisor, and to the Division of Behavioral, Developmental and Protective Services.

If the facility continues to operate a child care center or preschool after official notice from the Department, ask the county attorney to take legal action against the facility, and notify the Division of Child and Family Services. How quickly you make this request depends on the risk of harm to children. However, make the request within 30 days of the notice.

The county attorney may file misdemeanor charges and request the court to restrain the person from operating by permanent injunction.

## **DENIAL, SUSPENSION, OR REVOCATION OF LICENSE**

**Legal reference:** Iowa Code section 237A.8, 441 IAC 109.2(4) and (5)

**Policy:** Initial applications or renewals shall be denied when the applicant does not comply with center licensing laws and rules to qualify for a full or provisional license.

Initial applications or renewals shall be denied, or a license shall be revoked or suspended, if corrective action has not been taken when any of the following occur:

- ◆ The facility is operating in a manner which the Department determines impairs the safety, health, or well-being of the child in care and the facility does not qualify for a provisional license because either:
  - A corrective action plan is not approved, or
  - A provisional license has already been given for the same standards for more than two consecutive years.
- ◆ The owner, operator, or staff member with direct responsibility for child care, or anyone living in the child care facility has been prohibited from involvement with child care. (Refer to [RECORD CHECKS](#).)

- ◆ Information provided to the Department either orally or in writing or contained in the center's files is shown to have been falsified by the provider or with the provider's knowledge.
- ◆ The center is not able to obtain approval from the fire marshal.

### **Procedure**

1. When a recommendation is made to deny, suspend or revoke a license, send the recommendation to the licensing supervisor for approval and processing.
2. When the decision is made to deny, suspend, or revoke a license, the licensee shall receive a *Notice of Decision*, form 470-0602, by certified mail stating the reasons. A copy of the *Child Care Center Evaluation and Recommendation for License*, form 470-0724, or *Child Care Center Complaint*, form 470-4067, shall be sent with the notice.

When an official notice is given to deny, suspend or revoke a license, the Department shall notify the parent, guardian, or legal custodian of each child enrolled in the facility of the denial, suspension or revocation. The child care consultant shall get these names for the licensing clerk specialist so that the notice can be sent. See [NOTICE TO PARENTS](#).

3. After 30 days, if an appeal has not been made and the facility is still operating, send a certified letter with the following information:
  - ◆ A statement that this is official notice from the Department of Human Services to discontinue all child-caring services as a child care center because the license has been denied, suspended, or revoked.
  - ◆ A statement that this official notice is effective upon receipt of this letter.
  - ◆ The reasons with specific references to the Code of Iowa and the administrative rules.
  - ◆ That the Iowa Code section 237A.19 states, "a person who establishes, conducts, managers, or operates a center without a license shall be guilty of a serious misdemeanor."
  - ◆ That under the same Code section, "each day of continuing violation after . . . notice from the Department by certified mail shall be considered a separate offense."

Send a copy of the certified letter to the following county attorney, the licensing supervisor, and the Division of Child and Family Services. Place a copy in the licensing file.

4. If the decision to revoke or deny is appealed, a hearing is held, and the Department's action is affirmed, the appellant provider has 30 days in which to appeal to district court. Enforcement of the decision shall not take place until the earlier of the following:

- ◆ The 30 days for appeal to district court has expired, or
- ◆ The appellant provider has appealed but has not requested a stay of agency action.

Once one of these conditions has been met, the Department shall move to enforce the denial, suspension, or revocation, by taking same action as indicated in step 3 above.

5. If the appellant provider appeals to district court and requests a stay of agency action, and the stay is granted, the license shall remain in force until the case is resolved by a court decision.

If the court affirms the Department's decision, take action immediately to enforce the denial, suspension, or revocation and any court order issued by sending a certified letter containing the information specified in step 3.

6. If a facility continues to operate after official notice from the Department, ask the county attorney to take legal action against the facility, and notify the licensing supervisor and Division Child and Family Services.

The county attorney may file misdemeanor charges, and request the court to restrain the persons from operating by permanent injunction.

## **NOTICE TO PARENTS**

**Legal reference:** Iowa Code Section 237A.5 and 237A.8

### **License Denied, Suspended, or Revoked**

**Policy:** When a center or preschool has its license denied, suspended, or revoked; the Department shall send letters to notify every parent, guardian, or legal custodian of a child in care at the facility.

**RECORD CHECKS**

**Legal reference:** Iowa Code Sections 237A.5 and 692.2; 441 IAC 109.6(237A)

**Policy:** Every owner or operator of a licensed facility, all staff members with direct responsibility for child care, any person living in a facility, and volunteers that have unrestricted access shall have a criminal records check and a child abuse registry check. In addition, the Department may conduct dependent adult abuse, Sex Offender Registry, and other public or civil offense record checks in this state or in other states.

**Comment:** Employees such as cooks, janitors, and bookkeepers that do not have direct responsibility for child care, access to a child, or unrestricted access to the facility are not required to have record checks. However, record checks should be completed on a person if the director or operator anticipates that an employee may have direct responsibility for a child in an emergency or when other staff are absent, or if a volunteer will have unrestricted access.

There are a few licensed centers and preschools with family members or other persons living in the facility. Iowa Code Section 237A.5 and 441 IAC 109.6(6) require that each person 14 years of age or older living in a child care facility have a records check.

Information provided by a criminal records check or by a child abuse registry check is confidential. A licensee may discuss this information only with the person on whom the check was completed. A licensee or any other person who uses the information for other purposes or who communicates the information to another person may be guilty of a misdemeanor.

**Procedure:** The owner or operator of a licensed facility is responsible for initiating all required criminal and child abuse record checks for the facility. This is done by completing *DHS Criminal History Record Check (Form B)*, form 595-1396. The completed forms are submitted to the child care licensing support staff at: Department of Human Services, Polk County River Place, RE: Child Care, 2309 Euclid Ave., Des Moines, IA 50310. Refer to [12-E Appendix](#) for instructions for completing the forms.

The child care licensing support staff completes a *Request for Child Abuse Information*, form 470-0643, for each criminal records check request being made. The registry and criminal records check forms are processed by the child care licensing support staff.

Send a letter to the owner or operator of the facility that informs the center whether the person subject to an evaluation has been approved or denied involvement with child care. If there are any conditions or a corrective action plan related to the approval of the person's involvement with child care, the letter shall inform the center of any of these conditions or corrective action plan.

Note that the *Record Check Decision* and any other information relating to a conviction or a founded child abuse report is confidential. Any such information shall be kept in an administrative file separate from the licensing file and shall not be available for public review.

**Comment:** If the adverse decision is for an employee, and the employee decides to appeal, it shall be the decision of the owner or operator whether to let the employee continue working during the appeal.

A criminal record or child abuse record check in an employee's file is a confidential request. This record cannot be duplicated and transferred with an employee. Therefore, if an employee leaves one center and begins employment at a new center, the new center must complete a new form 595-1396, *DHS Criminal History Record Check, Form B*, and form 470-0643, *Request for Child Abuse Information*. The request does not have to be resubmitted for an employee who transfers between sites of the same corporation.